

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

SANDRA IRENE DUFFY,	)	Case No. 2:23-cv-05702-PA-JDE
Petitioner,	)	
v.	)	ORDER TO SHOW CAUSE WHY
WARDEN OF VICTORVILLE	)	THE PETITION SHOULD NOT BE
CAMP FCI MEDIUM, I,	)	DISMISSED
Respondent.	)	

## I.

## INTRODUCTION

On July 13, 2023, the Court received from Sandra Irene Duffy (“Petitioner”), a federal prisoner at Victorville Camp FCI Medium, I, in Adelanto, California, proceeding pro se and without paying the required filing fee or seeking leave to proceed in forma pauperis, a “28 U.S.C. § 2241 for Writ of Habeas Corpus,” seeking an order directing the Federal Bureau of Prisons (“BOP”) to apply First Step Act (“FSA”) earned time credits to Petitioner’s sentence. Dkt. 1 (“Pet.” or “Petition”).

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (“Habeas Rules”), a district court “must

1 promptly examine” the petition and, “[i]f it plainly appears from the petition  
2 and any attached exhibits that the petitioner is not entitled to relief,” the “judge  
3 must dismiss the petition.” See also Mayle v. Felix, 545 U.S. 644, 656 (2005).  
4 A habeas petition brought under 28 U.S.C. § 2241 is subject to the same  
5 screening requirements that apply to habeas petitions brought under 28 U.S.C.  
6 § 2254. See Habeas Rule 1(b) (providing that district courts may apply the  
7 Habeas Rules to habeas petitions that are not brought under 28 U.S.C. § 2254);  
8 Lane v. Feather, 584 F. App’x 843, 843 (9th Cir. 2014) (affirming district  
9 court’s application of Habeas Rule 4 in dismissing a Section 2241 petition).

10 The Court has reviewed the Petition under Habeas Rule 4 and finds the  
11 Petition is subject to dismissal for failure to exhaust administrative remedies.

## 12 II.

### 13 SUMMARY OF THE PETITION

14 Petitioner contends that she is serving a 206-month term of  
15 imprisonment imposed by the United States District Court for the Eastern  
16 District of Washington in Case No. 2:11-cr-00107-019. Pet. at 1, Exh. A. She  
17 claims she has served over 12 years of her sentence and with good time credits,  
18 her release date is April 23, 2026. Id. at 1. She asserts that she also is entitled to  
19 FSA earned time credits, which she calculates would result in a release date of  
20 November 8, 2023. Id. at 1, 3. Petitioner allegedly asked “BOP staff” if she  
21 was going to receive FSA credits and was told she would “only get 1 year of  
22 FSA” credits, which she claims is the “opposite” of the FSA. Id. at 1.  
23 Petitioner seeks an order directing the BOP to apply FSA credits correctly “as  
24 set forth by statute to the administration of [her] sentence[.]” Id. at 1, 4.

## 25 III.

### 26 DISCUSSION

27 “As a prudential matter, courts require that habeas petitioners exhaust  
28 all available judicial and administrative remedies before seeking relief under

1 [28 U.S.C.] § 2241.” Ward v. Chavez, 678 F.3d 1042, 1045 (9th Cir. 2012).  
2 Exhaustion aids “judicial review by allowing the appropriate development of a  
3 factual record in an expert forum; conserve[s] the court’s time because of the  
4 possibility that the relief applied for may be granted at the administrative level;  
5 and allow[s] the administrative agency an opportunity to correct errors  
6 occurring in the course of administrative proceedings.” Ruviwat v. Smith, 701  
7 F.2d 844, 845 (9th Cir. 1983) (per curiam).

8 As the requirement is not a “jurisdictional prerequisite,” courts have  
9 discretion to waive the requirement in Section 2241 cases. Ward, 678 F.3d at  
10 1045 (citation omitted); Laing v. Ashcroft, 370 F.3d 994, 998 (9th Cir. 2004).  
11 Courts may waive the requirement where administrative remedies are  
12 inadequate or not efficacious, pursuit would be futile, irreparable injury will  
13 result, or the administrative proceedings would be void. See Ward, 678 F.3d at  
14 1045; Laing, 370 F.3d at 1000. Factors weighing in favor of requiring  
15 exhaustion include whether: “(1) agency expertise makes agency consideration  
16 necessary to generate a proper record and reach a proper decision; (2)  
17 relaxation of the requirement would encourage the deliberate bypass of the  
18 administrative scheme; and (3) administrative review is likely to allow the  
19 agency to correct its own mistakes and to preclude the need for judicial  
20 review.” Noriega-Lopez v. Ashcroft, 335 F.3d 874, 880-81 (9th Cir. 2003)  
21 (quoting Montes v. Thornburgh, 919 F.2d 531, 537 (9th Cir. 1990)). The Ninth  
22 Circuit has held that sentence computation challenges are “exactly the type of  
23 case in which exhaustion of administrative remedies should be required.”  
24 Chua Han Mow v. United States, 730 F.2d 1308, 1313-14 (9th Cir. 1984); see  
25 also United States v. Clayton, 588 F.2d 1288, 1292 (9th Cir. 1979) (“It is the  
26 administrative responsibility of the Attorney General, the Department of  
27 Justice, and the Bureau of Prisons to compute sentences and apply credit  
28 where it is due.”).

1 Here, Petitioner appears to concede she has not exhausted her  
2 administrative remedies prior to filing her Petition. See Pet. at 2. She argues  
3 that the exhaustion requirement should be waived because pursuit would be  
4 futile as the BOP has “predetermined the issue that [she] only get 1 year of  
5 FSA” credits. Id. Petitioner’s contention is apparently based on a statement  
6 made by an unidentified “BOP staff” member that she would only receive one  
7 year of FSA credits. See id. at 1. Petitioner does not provide any details  
8 regarding this interaction, the BOP staff member’s position or title, including  
9 whether this staff member was authorized or qualified to opine on Petitioner’s  
10 eligibility for FSA credits, or claim this response represents the BOP’s official  
11 policy on FSA credits. The Court finds Petitioner has not provided sufficient  
12 factual support that the BOP has predetermined the issue such that pursuit of  
13 her administrative remedies would be futile. To the contrary, exhaustion of her  
14 administrative remedies would assist in development of the factual record,  
15 conserve the Court’s judicial resources where relief may be granted at the  
16 administrative levels, and allows the BOP an opportunity to resolve the issue  
17 in the course of the administrative proceedings. See Ruviwat, 701 F.2d at 845.  
18 Waiver of the exhaustion requirement is not warranted here. Accordingly, the  
19 Petition is subject to dismissal for failure to exhaust administrative remedies.

#### 20 IV.

#### 21 ORDER

22 For the foregoing reasons, the Petition is subject to dismissal. Petitioner  
23 is ORDERED TO SHOW CAUSE, in writing, by **no later than twenty-one**  
24 **(21) days from the date of this Order**, why this action should not be dismissed  
25 under Habeas Rule 4 for the reasons stated above. To the extent Petitioner  
26 contends she has exhausted her administrative remedies, Petitioner is directed  
27 to provide information regarding her efforts to exhaust her claim and attach  
28 copies of any documents establishing that her claim is indeed exhausted. If

1 Petitioner claims exhaustion of her administrative remedies should be waived,  
2 she shall set forth in detail all facts supporting this contention as well as any  
3 supporting documents.

4 If, after review of this Order, Petitioner should decide not to further  
5 pursue this action at this time, Petitioner may voluntarily dismiss the action by  
6 filing a Notice of Dismissal in accordance with Federal Rule of Civil  
7 Procedure 41(a)(1). The Clerk is directed to send Petitioner a Central District  
8 Request for Dismissal form.

9 Petitioner is cautioned that a failure to respond timely in compliance  
10 with this Order could result in this action being dismissed for the foregoing  
11 reasons, for failure to prosecute, and for failure to comply with a Court order.  
12 See Fed. R. Civ. P. 41(b).

13 Dated: July 21, 2023

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15 JOHN D. EARLY  
16 United States Magistrate Judge  
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